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National Highway Traffic Safety Administration
Docket Management
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590

NHTSA-01-11108-5

Re: Docket No. NHTSA 2001-11108; Notice 1; Notice of Proposed Rulemaking, Acceleration of Manufacturer's Remedy Program; 66 *Fed. Reg.* 64087 (December 11, 2001)

Dear Sir or Madam:

This comment responds to the above-captioned notice of proposed rulemaking (NPRM) on behalf of the Motor and Equipment Manufacturers Association (MEMA) and the Original Equipment Suppliers Association (OESA) (or, collectively, the Associations), which this firm serves as counsel.*

The accelerated remedy provision of the TREAD Act, 49 U.S.C. §30120(c)(3), is probably the best example of this law's enlargement of a particular safety concern (the availability of Firestone replacement tires) to a general application to vehicle and equipment manufacturers who have neither experienced nor presented the agency with this problem in the conduct of recalls. Under these circumstances, it comes as no surprise that "the agency expects that in the vast majority of recalls, this provision will not be invoked." 66 *Fed. Reg.* at 64088.

Replacement Parts

MEMA and OESA especially focus on one of the findings which TREAD requires NHTSA to make:

> "... that acceleration of the remedy program can be reasonably achieved by expanding the sources of replacement parts, expanding the number of authorized repair facilities, or both."

49 U.S.C. §30120(c)(3)(B). Proposed §573.14(b)(2).

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* **MEMA** exclusively represents and serves more than 700 North American manufacturers of motor vehicle components, tools and equipment, automotive chemical and related products used in the manufacture, repair and maintenance of all classes of motor vehicles. MEMA, headquartered in Research Triangle Park, N.C., has offices in Washington, D.C.; Kansas City, Mo.; Yokohama, Japan; Brussels, Belgium; Mexico City, Mexico; and Sao Paulo, Brazil. **OESA**, with offices in Troy, Michigan, is MEMA's affiliate association exclusively serving as a voice for the original equipment supplier industry. OESA represents over 260 automotive suppliers, with global automotive sales of $280 billion.

The Associations note that NHTSA's proposed rule would require "reasonably equivalent" replacement parts and service facilities, as the agency considers necessary, in an accelerated campaign. MEMA and OESA strongly take issue with the agency's introductory observation that "there are substantial numbers of ... parts such as ... brake rotors, steering and suspension components, and ignition components that can be used on many, if not most, vehicles." (At 64088.) This is a statement rife with dangerous safety risks if the agency attempts to direct or implement accelerated recalls based upon this belief.

Who is to make (and take responsibility for) a determination of "equivalence"? As well, who is to decide which of such "reasonably equivalent" parts and/or service facilities can be used in a safety recall campaign? Who is to oversee the testing of alternative parts or evaluation of additional service facilities? The NPRM preamble states that NHTSA "would require manufacturers to assure that replacement parts from additional suppliers ... are equivalent to the [manufacturer's] remedy parts ... [and] provide information to owners with respect to any differences among different brands of replacement parts." (At 64089.) As well, NHTSA proposes to "require the manufacturer to identify additional authorized repair facilities...." *See* proposed §573.14(d) and (e).

MEMA and OESA submit that if there is to be a final rule on accelerated recalls--a result which is not mandated by the controlling provision in TREAD--NHTSA itself must articulate standards or baselines for its "reasonably equivalent" term, and take responsibility for any such determinations made with respect both to additional sources of parts and service facilities.

The Associations' members are very concerned about the implications of the involvement of additional suppliers and/or third party service outlets in safety recall campaigns for which the former are to be held accountable, and as to which a manufacturer is representing to the motoring public it serves that the recall remedy will be effective and resolve--not cause--a safety risk.

NHTSA should understand that a manufacturer wants no part of a program which would require it to designate third parties to participate in the important remedial processes of a safety recall campaign. There are at least three reasons for manufacturer concerns:

(1) potential product liability exposure for deficiencies in the products or services of others over whom the manufacturer has little, or more likely no, control;

(2) the negative competitive impact from having to recommend other suppliers' parts and indicate that they are "reasonably equivalent" to those of the manufacturer; and

(3) future recall responsibility if a competitor's product or third party service facility remedy is deficient.

Need for Consultation

The accelerated remedy regulation, if finalized, must involve NHTSA decisions concerning "equivalence" and responsibility for all such determinations made. Manufacturers cannot be expected to take responsibility for surrogates imposed upon them by regulatory fiat. Further, if this process is to be an informed one for the agency and one of fairness to affected manufacturers while serving the public interest in avoidance of safety risk, NHTSA should closely consult with a manufacturer before proceeding with an accelerated recall program.

The agency's preamble statement that it anticipates "there would be consultation" with the manufacturer, but that such is not required by TREAD, should be revised, preferably in the rule's text, to provide an unqualified opportunity for a manufacturer to present data, views or arguments to assist in the agency's consideration of a possible accelerated remedy program.

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MEMA and OESA appreciate this opportunity to offer comments on the proposed rule.

Sincerely,

Lawrence F. Henneberger